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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED

APR 20 2005

OFFICE OF PETITIONS

In re Patent Application of:

First named Inventor: Mark Plaia, et al.

Application No: 09/938,882

Filed: August 24, 2001

Title: ANTI-STENOTIC METHOD AND
PRODUCT FOR OCCLUDED AND
PARTIALLY OCCLUDED
ARTERIES

)
)
) Docket No. 5770.CD2C.2

)
) Art Unit: 3738

)
) Examiner: Hieu Phan

#9

**PETITION FOR REVIVAL OF AN APPLICATION FOR
PATENT ABANDONED UNINTENTIONALLY**

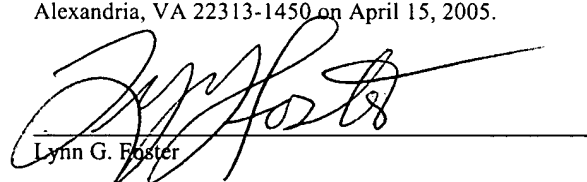
Attention: Office of Petitions
Mail Stop - Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

The above-identified application became abandoned for failure to file a timely and proper reply to an action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office Action plus any extensions of time actually obtained.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, in an envelope addressed to: Attention: Office of Petitions, Mail Stop - Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 15, 2005.

04/19/2005 EAREGAY1 00000002 061620 09938882

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Lynn G. Foster

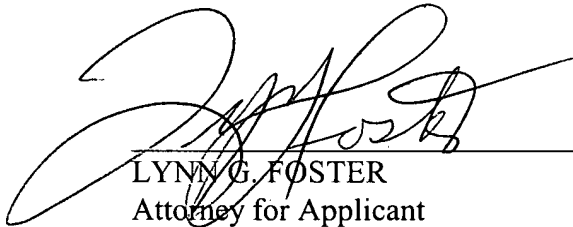
APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

The small entity petition fee for this petition is \$750.00. Applicant claims small entity status. Please charge this fee of \$750.00 and any other required fee to Deposit Account 06-1620.

A reply to the above-noted Office Action in the form of a Terminal Disclaimer responsive to the Office Action is enclosed.

The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition was unintentional.

DATED: April 15, 2005.



LYNN G. FOSTER
Attorney for Applicant

602 East 300 South
Salt Lake City, UT 84102
Telephone: (801) 364-5633



OFFICE OF PETITIONS

~~Lynn G. Foster~~

I, THOMAS WIITA, declare as follows:

1. I am a citizen of the United States of America and a resident of the State of Washington.
2. I am, and at all times relevant, have been and remain the President and CEO of Endovascular Instruments, Inc. (EVI), the assignee of patent application identified above.
3. EVI is the fifth proprietary technology-based company I have managed over the course of the last twenty years or so. In each case, protection of the company's technology through seeking, obtaining and preserving patents on the proprietary aspects thereof has been critical to the commercial success of each company.
4. With each of these five companies, it has been my exclusive responsibility to liaison with outside patent counsel to seek, obtain and preserve patent protection on the inventions owned by each company. These duties have included authorizing amendments to pending U.S. patent applications.
5. My patent-related duties over the years have required frequent coordination and communications with and informal training by outside patent counsel. As a result, I have become reasonably well-informed concerning U.S. patent law. However, from time-to-time, I have come to realize that some of the patent concepts I possessed proved to be erroneous.
6. Through most of the existence of EVI, Lynn G. Foster has been outside patent counsel for EVI. He was also outside patent counsel for the second company I managed, i.e., Catheter Technology Corp. (CTC). CTC specialized in normally-closed catheters made of silicone rubber

having normally-closed slit valves which opened to accommodate fluid flow therethrough when the pressure differential reached a certain predetermined magnitude.

7. Mr. Foster is an exceptional patent lawyer, through whose skills EVI has obtained extremely valuable patent rights.

8. The patent protection being sought and which has been or is being so obtained by Mr. Foster for EVI is essentially the only significant asset of EVI. Loss of any material part thereof would greatly reduce, if not destroy, the commercial value of EVI and possibly eliminate the ability of EVI to significantly address the medical problems of arterial stenosis and restenosis.

9. Clearly, it has always been the intention of EVI to acquire and preserve all patent rights possible. EVI has never had an intent to abandon or forfeit issued or pending U.S. patent rights. EVI has never had an intent to allow a valuable U.S. patent application to be lost by failure to respond to an Office Action.

10. While my duties as President and CEO of EVI include coordination with outside patent counsel, I also have many other duties. At times, I have been required to do the work of two men, while endeavoring to conserve the financial resources of EVI until its inventions are in commercial form and are on the market.

11. EVI has yet to reach the marketplace with invention-based commercial products designed to address the arterial problems of stenosis and restenosis, although that is the ultimate objective of EVI.

12. EVI has been a research, invention-generating and clinical trial-testing company, possessed of very limited clerical personnel. Outside medical doctors have made important inventions for the company, as have a few technical employees. It was a need to respond to a

concern of an outside inventor which caused me to make a thorough file review a few days ago resulting in a discovery of misfiled communications from Mr. Foster to EVI concerning an Office Action in the above-identified application, as explained below in greater detail.

13. Currently and for the last several years, I have done all of the management for the company. This has been overwhelming, including, among other things: (a) regular reports to the Board of Directors and to investors; (b) trips to and conferences with key medical doctors and other persons in various parts of the United States, at non-Washington locations, to facilitate their interest and participation in the objectives of EVI; (c) seeking a manufacturer of a reliable tubular graft or lining for arteries treated using EVI's inventions; (d) spending week-after-week in Europe observing and assisting medical doctors there in clinically testing EVI's inventions on cadavers, animals and living human beings; and (e) coordinating with outside patent counsel. In one recent calendar year, I made 13 separate trips to Europe, each of approximately one week's duration. In fact, I have just returned from a trip to Europe last week, as we are getting ready to gear up for the next phase of our clinical trials.

14. Currently and for the last several years, Thomas Kelly has been the exclusive employee assigned to laboratory research and product development for EVI.

15. Because often I have been and am away from the business offices of EVI, there has not been a regular need for a full-time clerical staff. In the interest of conservation of financial resources, during the last several years, EVI has not employed any secretaries and instead has employed temporary clerical staff, and has employed such temporary clerical staff only when needed and only for as long as a need existed.

16. Because I am frequently not available at my office, due to my heavy travel schedule and because Mr. Foster is in Salt Lake City, Utah, as opposed to Vancouver, Washington (where EVI is located), the custom and practice followed by Mr. Foster and me was to almost exclusively correspond in writing concerning patent matters. When Mr. Foster needed specific authority to act on a patent matter, he would write to me as to what was needed and I would respond in writing at the next available time when I was in the office of EVI. Over the years, this approach worked very well.

17. During the times I have been away from the EVI offices, strict instructions were given to all clerical staff to place written communications from Mr. Foster directly on my desk in an area designated for items requiring immediate action.

18. A few days ago, I discovered a number of misfiled written communications from Mr. Foster improperly placed by clerical staff in a remote accounting file, including communications from Mr. Foster, pertaining to the need to respond to the Office Action in the patent application identified above.

19. As soon as all members of our Board of Directors could be contacted (since many of them have intensive travel schedules also), the issue of non-response to the Office Action in question was raised. The Board, once contacted and after hearing the situation explained, quickly reached a consensus to authorize that all steps possible be taken to cure the problem.

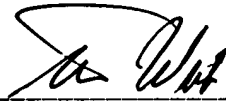
20. I contacted Mr. Foster, who, at the time, was facing court filing and other deadlines. Mr. Foster explained the revival process for unintentional patent application abandonment, obtained an explanation from me as to what had happened and said he would file a Petition to

Reinstate the Patent Application Due to Unintentional Abandonment, along with a Declaration from me, as soon as possible after he met his court filing deadlines.

21. Mr. Foster corrected me on some patent misconceptions I had.

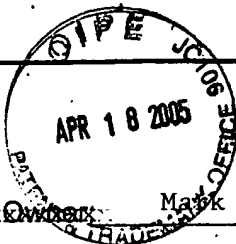
22. My frequent and sometimes lengthy absences from the offices of EVI, necessitated by my duties overseeing EVI's European and other activities, created a situation that resulted in unintentional abandonment of the above-identified patent application due to failure to timely respond to the above-mentioned Office Action. The entire delay in filing the reply from the due date until the reply was filed was unintentional.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001 and that such willful false statements may jeopardize the validity of the patent identified above.



THOMAS A. WIITA

Date: April 15, 2008



Docket: 5770.CD2C.2

STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: Mark Plaia, et al.

Application No./Patent No. 09/938,882 Filed/Issue Date: August 24, 2001

Entitled: Anti-Stenotic Method and Product for Occluded and Partially Occluded Arteries

Endovascular Instruments, Inc., a corporation

(Name of Assignee)

(Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest.
The extent (by, percentage) of its ownership interest is _____ %

in the patent application/patent identified above by virtue of either:

- A. ☒ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel 7391, Frame 226, or for which a copy thereof is attached.

OR

- B. ☐ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

1. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

2. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

3. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

☐ Copies of assignments or other documents in the chain of title are attached.

[NOTE: A separate copy (i.e., the original assignment document or a true copy of the original document) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

April 15, 2005

Date

LYNN G. FOSTER

Typed or printed name

Signature

Attorney of Record